

DWIGHT C. HOLTON, OSB #09054  
United States Attorney  
District of Oregon  
SCOTT E. BRADFORD, OSB #062824  
Assistant United States Attorney  
405 East 8<sup>th</sup> Avenue, Suite 2400  
Eugene, OR 97401  
(541) 465-6771

IN THE UNITED STATES DISTRICT COURT  
  
FOR THE DISTRICT OF OREGON  
  
(EUGENE DIVISION)

|                           |   |                                    |
|---------------------------|---|------------------------------------|
| UNITED STATES OF AMERICA, | ) | Case No. 10-CR-60123-HO            |
|                           | ) |                                    |
| Plaintiff,                | ) | GOVERNMENT'S SENTENCING            |
|                           | ) | MEMORANDUM                         |
| vs.                       | ) |                                    |
|                           | ) | (Sentencing set for July 19, 2011, |
| LOUIS J. BORSTELMANN,     | ) | at 10:30 am)                       |
|                           | ) |                                    |
| Defendant.                | ) |                                    |

The United States of America, by and through Dwight C. Holton, United States Attorney for the District of Oregon, and Scott E. Bradford, Assistant United States Attorney, respectfully submits the following sentencing memorandum which concurs with United States Probation Officer Davis's factual findings and sentencing recommendation of 108 months' incarceration and three years of supervised release. Additionally, this Court should order defendant to pay \$18,985,335 in restitution to the victims of his crimes.

**INTRODUCTION**

Defendant is a callous and brazen individual and a menace to society. For more than 15 years, defendant perpetrated his fraud, preying upon his victims, predominately the elderly and retirees, in an attempt to satisfy his greed. He victimized individuals who had worked hard their

entire lives and who saved and invested their hard-earned money in order to enjoy retirement. Many of defendant's victims entrusted him with their life savings, relying on defendant's false promises of a brighter and better tomorrow. For far too long, defendant and others in this country have lived by the fictional character Gordon Gekko's infamous words in the movie *Wall Street*, using them as their mantra and giving no heed to the number of victims left to suffer in the wake of their greedy destruction:

The point is, ladies and gentleman, that greed, for lack of a better word, is good. Greed is right, greed works. Greed clarifies, cuts through, and captures the essence of the evolutionary spirit. Greed, in all of its forms; greed for life, for money, for love, knowledge has marked the upward surge of mankind. And greed, you mark my words, will . . . save . . . the USA.

As shown by our country's recent and current economic and budgetary woes, greed did not save this great nation; instead, it has crippled it from a national level to an individual level. Perhaps the more fitting mantra, at least as applied to this case, is that the love of money, greed, is the root of all evil, and that evil has reared its ugly head in Florence, Oregon, victimizing those in its path.

### **INSTANT OFFENSE AND RELEVANT CONDUCT**

On October 21, 2010, defendant was charged in a 26-count Indictment, including eight counts of wire fraud, 13 counts of mail fraud, and five counts of money laundering, for swindling more than 100 people out of more than \$18 million through his Ponzi scheme. On March 29, 2011, pursuant to a plea agreement, defendant pleaded guilty to Counts 10, mail fraud, and 25, money laundering, of the Indictment. Despite pleading guilty to only two counts of the 26-count Indictment, defendant's entire scheme to defraud and criminal course of conduct is before this Court for sentencing.

The conduct giving rise to the charges and defendant's guilty plea are well chronicled in paragraphs 16-32 of the presentence report ("PSR") and in the Statement of Facts filed on March 29, 2011. A brief description of defendant's fraud follows.

As part of his plea agreement, defendant admitted that his business practice, purported real estate investments, was a fraud, a Ponzi scheme, and that he used it to fraudulently take more than \$18 million from his investors. Statement of Facts March 29, 2011. The evidence indicates that defendant's fraudulent conduct was underway no later than 1994, as alleged in the Indictment, but may have begun prior to that time.

Through his investment company Sunburst Associates, Inc., ("Sunburst"), defendant purported to manage a profitable investment company that provided hard-money loans in exchange for real estate trust deeds, when, in fact, this was not true. To solicit his victims, defendant falsely promised high rates of return and lied about the nature and security of the investments with Sunburst as well as the history and success of Sunburst and its management, including claims that:

- Actual borrowers were seeking hard-money loans from Sunburst;
- Loans through Sunburst were secured by real estate deeds of trust;
- Borrowers were paying interest rates significantly above the then-current market rates; and
- Sunburst was generating profits through the trust-deed loans.

To conceal and continue his fraudulent Ponzi scheme, defendant provided his victims with fraudulent investment materials, including copies of bogus installment notes and deeds of trust securing the investors' alleged interest in the allegedly pledged properties. The deeds of trust appeared to be properly notarized and recorded although they were not. The evidence

shows that defendant “cut and pasted” recording stamps and notary seals from properly recorded documents to the bogus installment notes and deeds of trust.

Between January 2000 and January 2009, defendant deposited more than \$18 million, representing money from approximately 100 investors, into a Sunburst bank account. Defendant used some of these proceeds to make purported monthly interest payments to investors in an effort to conceal his fraud and to make it appear that Sunburst was generating profits. Defendant also diverted money from Sunburst bank accounts and spent that money on personal items, including a car and a home.

As a demonstration of defendant’s brazenness and callousness, in October 2008, to pacify his victims during the financial meltdown in 2008, defendant sent his victims letters that falsely represented the status and security of their investments. In the letters, defendant falsely touted, “Sunburst is having no difficulty with any loans in its portfolio and does not anticipate any problems. I hope this letter has answered some of your questions and has helped your peace of mind with respect to the security of your investments with Sunburst.”

Shortly thereafter, in January 2009, defendant again demonstrated his brazen and callous attitude toward the crimes he had committed and the victims he had hurt by simply sending his victims a letter in which he stated, “I regret to have to tell you that your investments with Sunburst have no value. I have no money or assets left and \$500,000 in debt. All I have left is my Social Security. Given the nature of the situation, I am closing Sunburst & will likely file bankruptcy.” This conduct shows a total lack of remorse for the hundred or so lives he forever ruined.

### **OFFENSE LEVEL AND CRIMINAL HISTORY**

As noted in the PSR and the plea agreement, probation and the parties agree that defendant's Total Offense Level is 31, including enhancements for the amount of the loss, the number of victims, the level of sophistication, and a conviction for money laundering, and his Criminal History Category is I, resulting in an advisory United States Sentencing Guidelines ("U.S.S.G.") range of 108 to 135 months of incarceration. Additionally, pursuant to 18 U.S.C. § 3583, the term of supervised release to be imposed may not exceed three years.

### **18 U.S.C. § 3553(a) FACTORS**

In this case, a 108-month term of incarceration is appropriate and reasonable based on the factors outlined in 18 U.S.C. § 3553(a)—that is, this sentence contemplates the nature and circumstances of the offense and the history and characteristics of the defendant, reflects the seriousness of the offense, promotes respect for the law, provides just punishment for the offense, affords adequate deterrence to criminal conduct, and protects the public from further crimes of the defendant.

Defendant's scheme to defraud was extensive and sophisticated, and it was financially and emotionally debilitating to many of the victims, as evidenced by the victim impact statements ("VIS") that have been submitted to the Court. Below, the government has highlighted a few excerpts from VIS to help illustrate the nature and circumstances of the offense and the seriousness of the offense and to demonstrate the need for adequate deterrence and to protect the public from defendant. One victim wrote:

Since I received Mr. Borstelmann's letter telling us our Trust Deeds were worthless, my husband has passed away and I found myself with a lot less protection in my old age. In July I will be 80 years old. I have been in the hospital at least 6 times since this has upset my life and had to have a pacemaker put in. Also, I have had

to sell my home and move into a studio apartment.

Two other victims stated in their VIS, “The emotional toll was probably the worst. Knowing that all you had worked for was gone. It was depressing. . . . The Depression [sic] that we both suffered from and are still suffering from has changed our lifestyle[,] our personalities[,] and our outlook.” In another VIS, defendant’s victimization is disturbingly palpable, “Louis Borstelmann stole \$800,000 from me, basically all of my life savings. He took my independence. He stole my grandchildren’s educational trust money that I invested for them. He left me devastated and completely vulnerable.”

Perhaps the most accurate portrayal of the nature and circumstances of the offense and the characteristics of defendant was provided by an extremely frail investor from whom defendant cruelly solicited money just weeks before his Ponzi scheme collapsed:

I am sitting in a recliner because the arthritis in my back makes it too painful to sit straight up at a table. My fingers are painful and compromised because of the arthritis in my neck. I cannot afford the treatment I need or the transportation to get there.

In December 2008 Jim Borstelmann called to tell me he had some openings and asked if I would like to invest. I sent him \$75,000 more to invest – not realizing I wasn’t getting my December dividend check or any again on the \$100,000 I had already invested with him. We had many conversations. He knew at that time that it was over for him. I, of course, didn’t know. He knew that I had lost my driver’s license because of my vision. He knew I was having a hard time paying drivers to take me to doctors’ appointments, etc. . . He knew that my son had had a stroke and that I was helping him as much as I could financially. I still am.

Based on the foregoing, a 108-month term of incarceration reflects the seriousness of stealing money from trusting customers, promotes respect for the law, and provides just punishment for defendant. Further, such a sentence will not only deter defendant from engaging in future criminal conduct but will likely deter similarly situated individuals from engaging in

this type of illegal activity.

### **RESTITUTION AND FORFEITURE**

Regarding restitution, defendant, as part of his plea agreement, agreed, pursuant to 18 U.S.C. § 3663A, the Mandatory Victim Restitution Act (“MVRA”), to pay restitution as determined by this Court. The appropriate amount of restitution in this case, as stated in the PSR, is \$18,985,335. The MVRA makes restitution mandatory for offenses involving fraud or deceit without consideration of a defendant’s economic circumstances. 18 U.S.C. § 3663A(a)(1), (a)(2), and (c)(1)(ii); 18 U. S.C. § 3664(f)(1)(A). Restitution includes losses directly resulting from a defendant’s criminal conduct and includes losses relating to both the count of conviction and dismissed counts or relevant conduct. *United States v. Andrews*, 600 F.3d 1167, 1170-71 (9th Cir. 2010); *United States v. Bright*, 353 F.3d 1114, 1120-21 (9th Cir. 2004).

As applied to this case, defendant does not dispute that his criminal conduct, as described in the Indictment, plea agreement, and Statement of Facts, resulted in \$18,985,335 in losses to his victims. Accordingly, this Court should order defendant to pay \$18,985,335 in restitution.

Regarding forfeiture, on March 29, 2011, this Court entered a preliminary order of forfeiture in which defendant's interest was forfeited in \$100,000 in United States currency, in lieu of the real property commonly known as 674 Blue Oak, Thousand Oaks, California, and in one 2005 Lexus RX330, California License 5065RDP, VIN JTJGA31U550053599. This forfeiture is part of the defendant's sentence. Therefore, at the time of sentencing, the government respectfully requests that this Court (1) orally impose forfeiture as part of defendant's sentence and (2) include forfeiture in the Judgment and Commitment Order. The government has advertised and noticed third parties of this forfeiture action. No petitions have

been filed, and the government will present the final order of forfeiture for the Court's signature at sentencing.

### **CONCLUSION**

Based on the foregoing, the plea agreement, Statement of Facts, and the PSR, the government submits a reasonable sentence for this defendant in this case is 108 months' incarceration to be followed by a three-year term of supervised release. Additionally, the Court should impose forfeiture as part of defendant's sentence and order defendant to pay \$18,985,335 in restitution to the victims of his crimes.

DWIGHT C. HOLTON  
United States Attorney  
District of Oregon

/s/ Scott E Bradford  
SCOTT E. BRADFORD  
Assistant United States Attorney